

Incongruities in Indian constitution

By BS Murthy

Muhammad Ali Jinnah got what he wanted for Indian *Musalmans* though in time, their Quranic zeal turned Pakistan into a Rogue State. What of India, the product of an irony of a partition in that while some *Musalmans* walked away with one-fourth of its land, others stayed back to nurse their separatist dogma in its truncated bosom?

While the Hindu nationalists lamented about the loss of their ancient land, the *Musalman* intellectuals were alarmed at their reduced numbers vis-à-vis the Hindus. Even as the Golwalkars articulated the Hindu frustration in shrill tones, the Maulana Azads voiced the Muslim apprehensions in secular tunes. Whatever, as Pakistan became an Islamic State for the *Musalmans*, India remained a habitat of varied interest groups, the *Musalmans* included! While the Indian political classes were beset with a sense of loss that partition brought in in its wake, the Hindu intellectuals were upset by the age-old caste guilt that the reform movement occasioned in their collective consciousness.

It was in such a setting that India ventured to formulate a constitution for itself, of course, piloted by Babasaheb Ambedkar, the intellectual giant from the depressed classes. Yet the end product, touted as the bulkiest of the written constitutions in the comity of nations, turned out to be an exercise in selective amnesia.

"WE THE PEOPLE OF INDIA, reads the preamble of the Constitution of India, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic, and political;

LIBERTY of status, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

And to promote among all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

None can fault the lofty ideals of this august document but for the politicization of the testament itself, i.e. by the induction of socialism into it. Strange it may seem, won't the socialistic slant negate the economic justice that it seeks to provide? After all, socialism, as per the COD, is a political and economic theory of social organization which advocates that the community as a whole should own and control the means of production, distribution, and exchange. How could there be an economic justice for an individual enterprising Indian then?

However, mercifully in the end, PV Narasimha Rao, the Accidental Prime Minister, aided by Dr. Manmohan Singh, his hand-picked Finance Minister, managed to extricate India from the Nehruvian socialist grip to leave his lasting legacy as the 'Architect of Economic Reforms'. But that was not before socialism wrecked Indian industry, stunted its enterprise, and ruined its



economy so much so that, for servicing its national debt, the country had to pledge its gold for some sterling pounds.

But before that, as if the religious leeway provided by Ambedkar & Co. to the Musalmans and the Christians to upset the demography of India's diminished geography, Indira Gandhi, during her infamous emergency, unconstitutionally amended the constitution to further stymie the Hindu majority though with the laudable 'Statement of Objects and Reasons' appended to the Constitution (Forty-fourth Amendment) Bill, 1976 (Bill No. 91 of 1976) that was enacted as The Constitution Forty-second Amendment Act, 1976, which avers that –

"A Constitution to be living must be growing. If the impediments to the growth of the Constitution are not removed, the Constitution will suffer a virtual atrophy. The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the public for some years now."

Be that as it may, without specifying "the difficulties which have arisen in achieving the objective of socio-economic revolution" in the said bill it was stated that –

"It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, ..." based on which the Constitution (Forty-fourth Amendment) Act, 1976 had sought to remodel India as "Sovereign Socialist Secular Democratic Republic."

Whatever, as neither the said bill nor the specified act defined what constitutes a secular republic; we may turn to the COD that defines the hallowed but much abused word thus:

1. concerned with the affairs of this world; not spiritual or sacred.
2. (of education etc.) not concerned with religion or religious belief
3. a. not ecclesiastical or monastic.
b. (of clergy) not bound by a religious rule.

Hence, with regard to the above –

1. Is not the spirit of our secular republic against the State subsidy of the *Haj* (which the Supreme Court had to order to be given up in a phased manner) as that amounts to its showing concern with the spiritual matters of the Muslims?
2. Is not the penchant of the *Musalmans* for the *madrasa* education for their children that stresses upon Islamic separatist dogma against the spirit of our secular republic?
3. Is not the assertion of the *mullahs* that they are bound by the *sharia*, the rule book of Islam, tantamount to the negation of the secular ethos of our remodeled republic?

Be that as it may, in spite of Indira's unholy amendment, as Indian constitution remained a holy cow, Narasimha Rao had to let it go, besides, he happened to be a congressman and had to run a minority government at that.

Nevertheless, the article of the 'Original' Indian Constitution with regard to "Freedom of conscience and free profession, practice and propagation of religion" exhorts thus:

1. Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
2. Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-
 - (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.”

Agreed, the right of the citizen for the profession and practice of one's religion is unexceptionable for it constitutes the birthright. But, why an ordinary Indian citizen should be concerned about the propagation of his faith for the constitution to grant it to him? Besides, where does the right of an Indian citizen for propagation of his faith leave his fellow citizen's cultural need for preservation of his own order, *sanātana dharma* in case of the Hindus? After all, the right of propagation is but the right to spread one's religion, and one cannot do that without coming into direct conflict with another's religious faith or *dharma*, as the case may be, can any?

It's thus, as one citizen's right to propagate his faith vitiates the right of another to profess and practice his religion, India's Constitution by granting the right for propagation of one's religion per se, willy-nilly takes away another's implied right for the preservation of his own faith. Besides, to what avail is the right to propagate one's religion for the citizen rather than to fuel the zeal of the religious zealots for converting?

And what about the 'FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation' that the constitution provides for! What of the *individual dignity* of those Hindus whom the evangelists try to lure into the Christian fold, for them to embrace the Son of an alien God! Thus, is not the creed of the Church to propagate its faith that causes the poor of the land to lose their dignity is at odds with our constitutional spirit itself? Besides, as the *raison d'être* of religious propagation is conversion, wouldn't that individual right prove inimical to *the unity and integrity of the Nation*?

However, going by the hell raised by the missionaries, the *mullahs*, their political cohorts and the co-opted media, at any move by the State to disfavor fraudulent conversions, the popular belief is that the right for propagation is without any constitutional or moral strings attached to it! Only when the clamor for the future partitions of India on religious lines picks up, would a Western historian be able to spot the constitutional blind spots that gave rise to the development! Yes, it needs Western intellectuals even to see it all in the hindsight even, for India's left-leaning political analysts and Islamapologist liberals are notoriously blind to the realities of the Indian life and times.

Whatever, what's the rationale of religious propagation based on which the framers of the constitution granted that to its citizens? Though Hinduism and Judaism, the world's oldest surviving religions, are content with their constituencies, it is the Christianity and Islam, the new brands in the religious marketplace that hanker for conversions, of course, having come into being through propagation. Indeed, their religious spread worldwide is owing to their creed as enshrined in their Scriptures per se. If not all, most Christian missionaries and every *Musalman mullah* entertain the dream of seeing the world turn all Christian or all Islamic as the case may be; after all, that's what their scriptures ordain and their religious creed obliges them to do so, and in the Indian context one has to contend with the *jihadi* penchant to transform Hindustan into *Ghazwa-e-Hind*.

It thus defies logic as to how our constitution makers, who went about the exercise in the immediate wake of the country's partition on religious lines, thought it fit to endorse the propagation of one's faith, read the Christian and the Islamic, in the Hindu midst! Well, it's the illusionism of Gandhi that became the idealism of the Congress which influenced the Constituent Assembly of the just-partitioned India. And that shows. How strange then, that the constitution exhibits a singular lack of application of mind of its framers to secure India's integrity as a constituent country for all times to come. Sadly thus, the wise-heads of that time, not to speak of the foresight, lacked the hindsight even. God forbid, they seemed to have unwittingly laid the seeds of a future partition of the Hindustan, whose wings Jinnah had

already truncated. But, would this religious 'constitutional' error ever be erased from our statute before history gets repeated! Doubtful though.

If all this were Ambedkar's idea of a religious safety valve for the disenchanted *dalits*, the then *harijans*, yet it would be a betrayal of India's cause. However, the true *dalit* emancipation lies in bringing about the Hindu reformation from within and not in their opting out of the faith, and surely that wouldn't have been beyond Ambedkar's robust intellectual grasp. More significant is his own understanding of the Islamic credo that he articulated thus:

"Hinduism is said to divide people and in contrast, Islam is said to bind people together. This is only a half truth. For Islam divides as inexorably as it binds. Islam is a close corporation and the distinction that it makes between Muslims and non-Muslims is a very real, very positive and very alienating distinction. The brotherhood of Islam is not the universal brotherhood of man. It is the brotherhood of Muslims for Muslims only. There is a fraternity, but its benefit is confined to those within that corporation. For those who are outside the corporation, there is nothing but contempt and enmity. The second defect of Islam is that it is a system of social self-government and is incompatible with local self-government because the allegiance of a Muslim does not rest on his domicile in the country which is his but on the faith to which he belongs. To the Muslim *ibi bene ibi patria* is unthinkable. Wherever there is the rule of Islam, there is his own country. In other words, Islam can never allow a true Muslim to adopt India as his motherland and regard a Hindu as his kith and kin. That is probably the reason why Maulana Mahomed Ali, a great Indian but a true Muslim, preferred to be buried in Jerusalem rather than in India."

Thus, he would not have been oblivious to the inimical consequences of affording a free religious leash to the *moulvis* to lead the *Musalman*s on a separatist course in the partitioned Hindu majority India, but yet that's what precisely he did! Surely, one can understand Babasaheb's hurt that made him vow not to die a Hindu, and, indeed, he did keep his word by embracing Buddhism before his death, but whether he wished the comeuppance of the Hindus at the hands of the *Musalman*s, one might never know.

Now, over to the "Freedom as to attendance at religious instruction or religious worship in certain educational institutions" that the constitution stipulates.

- (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- (3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto."

The sum and substance of the freedom of religious instruction is that the State, in true secular spirit, is expected to keep itself away from it (religious instruction) in the physical sense, and no more. However, the catch here is that the religious education is fine so long as the government does not fund it for that allows the State to retain its secular pretence by keeping itself overtly out of religion. Even otherwise, one would expect the constitutional makers to address the content of the religious education to serve the needs of the communities concerned, without compromising the general public order and good, but they failed 'India that is Bharat' in that respect as well.

Well, every community needs some amongst them to undergo religious education to meet its spiritual and social needs in accordance with the tenets of its faith and feelings. That should at once be the scope as well as the limitation of the religious education, isn't it? So as to cater to these legitimate needs of a given religious group, the required religious education with or without the government funding forms a fundamental communal right of the members of that group. Right, but what if in the name of freedom of religious instruction, the dogmas of such faiths, given to deride the religious beliefs of fellow citizens, are sought to be inculcated in an unwieldy number of members of that community? Won't such a move hamper the secular character of the country besides inculcating religious bigotry in the mind-set of any given community?

Obviously, the framers of the constitution, but for Ambedkar, arguably Islamic naive, couldn't delve deep enough into the vexatious subject of religious intolerance of the practicing faiths in the country. What is worse, this supposed constitutional religious goodness came in handy for the ugly politician to turn it into an exploitative mask for the minorities' votes in the election seasons. It is one thing to espouse the cause of the minorities and another to abet the bigotry of the *Musalman*s and the prejudices of the Christians. Sadly, for the minorities, moreso for the *Musalman*s our politicians tend to be on the right side of their wrong issues to the benefit of none, save themselves.

Yet, it has become fashionable in the Indian politico-social discourse to juxtapose secularism and communalism that is with a matching ignorance about the latter for communalism is "a principle of political organization based on federated communes." No wonder that even seventy-one years after its independence, as India is still groping for its political direction in an ideological darkness, thanks to the Semitic promiscuity that Indian constitution grants, for the human rights activists, the *Musalman*s and the Xians holding on to their scriptural dogmas is kosher, but the right of the Hindus to articulate their religious sentiments or cultural concerns, and / or both is sheer religious intolerance, and that's perplexing.

In the light of the above may be seen the hollowness of the fundamental duties Indira's infamous amendment imposes upon the citizens that are rarely, if ever, fulfilled by the rulers themselves.

1. While it is incumbent upon the citizenry "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women" -

- the political ethos has been to cynically reap electoral dividends by exacerbating social dissensions based on region, religion, caste et al.

2. While it is the fundamental right of the citizen "to develop the scientific temper, humanism and the spirit of inquiry and reform" –

- a) The State had failed its Hindus to rein in the caste *panchayats* that tend to lynch the inter-caste couples and

- b) The politicians, who treat the *Musalman*s as a vote-bank had neither encouraged them to inculcate the spirit of inquiry nor provided them an environment conducive for reform.

Whatever, owing to the vacuity of verbiage in the over the 100k word-long Indian Constitution, a rabid Islamic obscurantist and a dyed-in-the-wool Hindu nationalist have been able to pin their juxtaposing positions, with equal aplomb, and that's ironical. However, while the Hindu secular habit of left-lib brainwash would like to equivocate the *Jai Sriram* chants with the *Musalman* rant of *Allah Hu Akbar*, one needs to understand the latter in the context of *azan*, the *muezzins'* five-time a day call to the faithful for Islamic prayers, which reads thus:

*"Allah is the Greatest,
I bear witness that there is none worthy of worship except Allah,
I bear witness that Muhammad is the Messenger of Allah,
Come to Prayer,
Come to success.
Allah is the Greatest
There is none worthy of worship except Allah."*

It is thus, Hindus, Christians, Buddhists, Sikhs et al of India, and of the world, have to endure the *azan*, blaring from the loudspeakers of their neighborhood *mosques* five times day, which, besides offending their own belief-system is bound to hurt their religious sentiments. But no one is seemingly caring, not even the evolved Christian West.

That is not all, wonder how the inimical *quranic* tirades of the *Musalmans* against *kafirs* in *mosques*, *madrasas* and *mohallas* reconcile with their FUNDAMENTAL DUTIES as Indian citizens that are stipulated in the Indian Constitution, as under, is anybody's guess.

"PART IVA , 51A. It shall be the duty of every citizen of India

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women."

Also, the Christian proselytizers as Indian citizenry fare no better in their constitutional compliance for besides branding Hindus as heathens, they label their deities as false.

Needless to say, the copy (from other constitutions) and paste (in the Indian Constitution) work of the so-called framers of our constitution, comprising of the Semitic-naïve caste Hindus and a well-informed, though embittered *dalit*, as argued above, needs a pragmatic overhaul, for which the level of Hindu awareness about the Abrahamic outrage against their *sanātana dharma* has to raise to self-respecting heights of Himalayan proportions, hopefully.

So, it is time for WE THE PEOPLE OF INDIA, over seventy years after our fathers, or be it grandfathers, had adopted the constitution, to factor the new realities into a more equitable document? After all, isn't the level playing field the theme song of the modern world order? And the Hindu emotional grievance is that they are denied just that in the religious plane in the country that their forbears made their own before all others.